pp. 14 - 17 of the Agreed Bundle of Documents - B).

Mr. D.P. Naban argued that if parties used the words "subject to contract" or "subject to terms and conditions to be agreed" they were not showing an intention to be bound.

In this case even the plaintiff's own Financial Adviser, who was negotiating the terms and conditions of the intended purchase confirmed that there was no agreement reached between the parties. Furthermore the many draft Agreements were not agreed upon or signed. It is also clear from PW1's letter to the Bank dated 26 June 1989 that he never thought that the contract had been concluded even at that stage because otherwise he would be guilty of inducing the Bank to breach the alleged contract.

Finally, to the last point for consideration, that is whether the Bank's purported termination of the said Agreement *vide* their letter dated 10 July 1989, by giving the plaintiffs twenty-four hour's notice is untenable and not valid. It was submitted on behalf of the plaintiffs that the Bank and/or its officers had a collateral motive in withdrawing, that is they intended to frustrate the transaction as they had received two other offers.

However, it was argued on behalf of the Bank that there is no contractual or any other obligation to keep the negotiations open or to give notice to call off negotiations in law.

It is clear from the letter dated 10 July 1989 (Page 100 - Bundle B) that there was no response from the plaintiffs, to the revised Draft of the Sale and Purchase Agreement which was sent to the solicitors for the plaintiffs on 29 June 1989. The plaintiffs were give eleven days to respond and yet they never did. Thus in the absence of any contractual obligation to keep the negotiations open or to give notice to call off the negotiations, I am of the view that the Bank, is entitled to withdraw from the negotiations at anytime.

Therefore for all the reasons stated and on a balance of probabilities, I have no alternative but to dismiss the plaintiffs' case with costs.

TAY GUAN SOON

v.

GANESHA SDN. BHD.

HIGH COURT, MALACCA
DATUK WIRA WAN YAHYA BIN PAWAN TEH J.
[CIVIL APPEAL NO. 11-2/1987]
11 DECEMBER 1992

LANDLORD & TENANT: Claim for vacant possession - Appeal against order of Magistrate - Whether notice to quit bad in law - Whether tenancy determined according to law - Whether tenancy is one coupled with equity - Whether appellant's occupation of land protected by equity.

The plaintiff became the registered owner of a piece of land on which the defendant was a tenant. The defendant had built a house on a piece of the said land with the permission of the previous landowner. The plaintiff served a notice to quit on the defendant and upon the defendant's failure to vacate the premises, sued for vacant possession and arrears of rental. There was no evidence of any demand for arrears of rental.

The learned Magistrate ordered the defendant to deliver up vacant possession to the plaintiff and the defendant appealed on the grounds firstly that the notice to quit was bad in law and secondly that his tenancy was coupled with an equity and could not be determined in the manner adopted by the plaintiff.

Held:

[1] It is settled law that it was the duty of the landlord to make a demand for rent on the premises and if he did not do so he could not rely on the proposition that the rent was in arrears.

[2] The plan to build the house (D3) had the signature of the trustee of the previous landowner and this signature by itself raised a strong inference that the house had been built with the express approval of the previous owners and the expenditure involved in the construction gave rise to an equity making the appellant a tenant with an equitable estoppel.

[3] Had the Magistrate drawn the proper inference from D3, she would have probably found that the tenancy was one coupled with

an equity and therefore the appellant's occupation of the land was protected by equity and could not be determined by a bare notice to quit.

[Appeal allowed. Order for possession set aside].

Cases referred to:
Chop Lean Yak v. Ng Ah Hee [1953] 19 MLJ p. 6 ***(foll)***
Thung Fun v. Looi Fong Um [1952] MLJ 122 ***(foll)***
Retnansamy v. Teoh Ngoo Mooi & Ors. [1983] 1 MLJ p. 344 ***(cit)***
Mok Deng Chee v. Yap See Hoi & Ors. [1981] CLJ 124 / [1981] 2 MLJ p. 321 ***(foll)***
Inwards v. Baker [1965] 1 AER 446 / [1965] 2 WLR 212 ***(foll)***
Kassim Bin Arippin v. Mohamed Bin Ramlan [1971] 1 MLJ p. 87 ***(refd)***
Yong Tong Hong v. Siew Soon Wah & Ors. [1971] 2 MLJ p. 105 ***(foll)***

Other sources referred to:
Woodfall on Landlord and Tenant at para 1-1905

For the plaintiff - Yap Koon Roy; M/s. Nordin & Phua
For the defendant - Yau Jiok Hua; M/s. Yau Jiok Hua

JUDGMENT

Wira Wan Yahya bin Pawan Teh:
This is an appeal by a tenant against the decision of the learned Magistrate ordering him to quit and deliver up vacant possession of a portion of the land known as Holding No. 45 Village of Tanjong Kling, Section II, and premises No. C 8592, Tanjong Kling, Melaka and arrears of rental in the sum of RM1,000 and costs.

I am informed that the outcome of this appeal would affect a number of cases and the parties have agreed that this would be the test case and as such the decision of this appeal would also be binding on the other cases.

The respondent became the registered owner of the land in question measuring about 22 acres 1 rood 0 pole, now subdivided into 200 subdivided building lots, in 1979 when he purchased it from the Estate of Seet Kee Ann. Though the respondent became the registered owner in September 1979, it was not until the "Notice to Quit" dated 23 February 1985 (P59 of Appeal Bundle) that the appellant became aware of the change of ownership, almost a lapse of six years. The appellant has been living on the land paying a ground rent of RM12 per month to the previous landowner. Previous to that, the appellant's late father had been in occupation from 1963 till his death. Subsequently, the appellant had built a house on the portion of the said land in 1973 as the owners at that time had given him permission. Copy of the Plan signed by the owner was produced at the trial and submitted as D3. After the house was built, the previous owner did try to raise the rent of RM12 and then stopped collecting rentals as there was no agreement as to the increase of rentals.

The appellant along with 69 others attempted to negotiate with the solicitors for the respondent after receipt of the "Notice to Quit" but to their surprise found that the summons had been taken out against them. The appellant refused to move because as he put it, "because I lived there and have spent money building the house after permission by the owner". The appellant was never challenged on this point.

The learned Magistrate on the balance of probabilities found for the respondent and the appellant appeals on two grounds, namely, the Notice to Quit is bad in law and the tenancy is one coupled with equity and cannot be determined in the manner adopted by the appellant.

It is settled law that it is the duty of the landlord to make a demand for rent on the premises and if he does not do so he cannot rely upon the proposition that rent is in arrears. See *Chop Lean Yak v. Ng Ah Hee* [1953] 19 MLJ p. 6. Spenser Wilkinson J, in that case quoted the Court of Appeal in *Thung Fun v. Looi Fong Um* [1952] MLJ 122, in the High Court, remitted the case back directing the Court below to make a definite finding of fact on whether there was any agreement as to where the rent should be paid and whether a demand for the rent on the premises had been made. In this instant case, the learned Magistrate did not make a finding of fact of such nature as required by the law. It appears that no demand for arrears of rentals have been made on the premises and whether there has been express agreement as to where the rent should be paid. According to **Woodfall on Landlord and Tenant** at para 1-1905, if no place is appointed, "**the demand must be made upon the land and at the most notorious place of it".**

The appellant's Counsel also attacked the respondent's notice to quit which he alleged was bad in law. He contended that there was no proof of the determination of the appellant's tenancy. He cites the case of *Retnansamy v. Teoh Ngoo*

Mooi & Ors. [1983] 1 MLJ p. 344. The Notice to Quit dated 23 February 1985 required the appellant to quit and deliver up vacant possession on 1 April 1986. The summons was filed on 21 May 1985 and issued by the Court on 25 September 1985. It is the contention of the appellant that the condition precedent for institution of eviction proceedings have not been fulfilled, namely, the determination of the tenancy according to law.

The appellant's Counsel also attacked the decision of the learned Magistrate on the principle of equitable estoppel. The appellant became aware of ownership of the respondent in 1985 though the respondent bought the land in September 1979. Appellant had built the house in 1973. He produced (D3) - the plan to which the previous owners had given consent. He had spent substantial sum of money putting up the building. The appellant's evidence on this issue was not challenged on this point.

It was held by the Federal Court in *Mok Deng Chee v. Yap See Hoi & Ors.* [1981] 2 MLJ p. 321 that as the appellant's tenancy was coupled with an equity it could not be determined by a bare notice to quit.

Close examination of D3 reveals that the plan had the signature of the Trustee of the Estate of Sit Kee Ann, deceased, the previous land owners. This signature by itself raises a strong inference that the house had been built with the express approval of the previous owners and the expenditure involved in the construction must necessarily give rise to an equity making the appellant a tenant with an equitable estoppel. I am also of the view that the transfer of the land to the respondent will not effect the tenancy and equity of the appellant. The Court of Appeal in England in *Inwards v. Baker* [1965] 1 AER 446 and [1965] 2 WLR 212 held that:

> where a person expended money on the land of another in the expectation, induced or encouraged by the owner of the land, that he would be allowed to remain in occupation, an equity was created such that the Court would protect his occupation of the land, and the Court had power to determine in what way the equity so arising could be satisfied.

The Singapore Courts in *Kassim Bin Arippin v. Mohamed Bin Ramlan* [1971] 1 MLJ p. 87 applied the principle of *Inwards v. Baker* and held that since the plaintiff had been induced by the defendant to expend money on the house in expectation of being allowed to occupy the house, the plaintiff was entitled to remain in the house as his house, but subject to payment of water and electricity dues.

In the same year, the Malaysian Federal Court applied the same principle in *Yong Tong Hong v. Siew Soon Wah & Ors.* [1971] 2 MLJ p 105 and held that as the appellant had expended money on the land of another in the expectation of being allowed to remain in occupation, equity would protect his occupation of the land.

It appears from her grounds of judgment, the learned Magistrate had required a higher standard of proof than necessary before accepting that the house was built by the appellant with the approval of the previous owners. Had she drawn the proper inference from D3, she would have probably found that the tenancy was one coupled with equity and therefore the appellant's occupation of the land was protected by equity.

I shall therefore allow this appeal and set aside the order for possession made by the Court below.